

**REMARKS**

Claims 6-8, 24-39, 42, 44-48, 50, 70-76, 78-86, 89-91, 93, 96-99, 114, 117, and 122 are currently pending in this application. Claims 6, 24, 70, 89, 90 114, and 122 have been amended herein. Claims 50 and 93 have been cancelled herein. The amendments to the claims are to the style and format of the claims and no new matter has been added as a result of this amendment. Claims 24-39, 42, 44-48, 70-76, 78-86, 91, 96-99 and 117 have been allowed.

In the Office Action dated April 30, 2004, the Examiner has rejected Claims 90 and 114 under 35 U.S.C. § 102(b) as anticipated by ES 2100821 (ES '821). As noted by applicants in response to the Examiner's previous reliance upon ES '821, ES '821 is directed to a skin tonic. Moreover, ES '821, includes sesame oil, oil of cloves, oil of cinnamon, oil of myrrh and oil of dill. To the contrary, Claim 90 is directed to a fungicide composition which includes an essential oil, or at least one component thereof, from *Laurus nobilis*, in combination with at least one other fungicide, and Claim 114 is directed to a composition to repel or kill insects, fungi, nematodes and bacteria, which includes an essential oil or component thereof derived from at least one plant species in the Family *Labiatae* and *Umbellifera*. Nowhere is there any appreciation in ES '821 that its skin tonic could act as a fungicide, nor is there any requirement that at least one other fungicide be present as disclosed in Claim 90. Moreover, nowhere is there any appreciation in ES '821 that its skin tonic could be utilized to kill or repel an organism such as insects, fungi, nematodes and bacteria as disclosed in Claim 114. Thus, withdrawal of this rejection based upon ES '821 is respectfully requested.

The Examiner has rejected Claims 6-8, 90 under 35 U.S.C. § 103(a) as obvious over Hengelmolen et al. (J. Chem. Soc., Faraday Transactions, 1997, vol. 93, no. 20) ("Hengelmolen"). The Examiner asserts Hengelmolen teaches a water-in-oil emulsion including anethole, but not in the claimed range. However, Hengelmolen discloses a method to monitor the desorption into water of partly water-soluble compounds from a finely dispersed oil phase, which relies on the properties of an aromatic water insoluble fluorocarbon formulated and synthesized for use as the carrier oil. Nowhere is there any suggestion in Hengelmolen that its compositions could be utilized as a composition to repel or kill insects, fungi, nematodes and bacteria, as required by Claims 6-8, or as a fungicide, as required by Claim 90. There simply is no teaching or suggestion in the abstract of Hengelmolen that its compositions can, in fact, be

utilized for these purposes. This is not surprising, as Hengelmolen is directed to methods for monitoring the desorption of partly water-soluble compounds and is thus non-analogous art. Thus, without such a teaching or suggestion of utilizing Hengelmolen's composition to kill pests associated with plants, Hengelmolen cannot render Claims 6-8 and 90 obvious.

The Examiner has rejected Claim 122 under 35 U.S.C. § 103(a) as obvious over Bourrel et al. (Rivista Italiana EPPOS. 1995, vol. 6, no. 16) ("Bourrel"). Claim 122 is directed to a composition to repel or kill insects, fungi, nematodes and bacteria, including a specifically identified essential oil or component thereof, in combination with a bacterium which degrades essential oils or components thereof. While Bourrel discloses bacteriostatic and fungistatic effects of essential oils, including some of the constituents thereof, there is no specific mention of anethole, nor is there any identification of what essential oils, or portions thereof were actually utilized or tested. Moreover, nowhere in Bourrel is there any teaching or suggestion of combining any of the undisclosed oils or constituents thereof with any bacteria. Without such a disclosure, there can be no teaching or suggestion of the composition of Claim 122, which includes a specific essential oil or component thereof in combination with a bacterium. Thus, Bourrel fails to disclose or suggest the composition of Claim 122.

Finally, the Examiner has rejected Claims 89, 90 and 114 under 35 U.S.C. § 103(a) as obvious over Selga et al. U.S. Patent No. 5,998,335 ("Selga"). Selga discloses an herbicidal composition consisting essentially of the combination of pine oil and tea tree oil or eucalyptus oil. To the contrary, Claim 89 claims a composition to repel or kill insects, fungi, nematodes and bacteria, including an essential oil or a component thereof from at least one plant species in the Family *Labiatae* and *Umbellifera* in combination with at least one other pesticide; Claim 90 is directed to a fungicide composition which includes an essential oil, or at least one component thereof, from *Laurus nobilis* in combination with at least one other fungicide; and Claim 114 is directed to a composition to repel or kill insects, fungi, nematodes and bacteria, which includes an essential oil or component thereof derived from at least one plant species in the Family *Labiatae* and *Umbellifera*.

While the compositions of Claims 89, 90 and 114 are utilized to kill or repel pests associated with plants, they do not kill the plants themselves. To the contrary, the composition of Selga is an herbicide: it is used to kill plants. Thus, Selga's herbicide teaches away from

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applicants' claimed compositions, which kill pests associated with plants thereby promoting plant growth. There is no teaching or suggestion in Selga that its compositions are effective against insects, fungi, nematodes and bacteria as required by Claims 89 and 114, nor is there any teaching or suggestion in Selga that its compositions are effective against fungi, as required by Claim 90. There also is no suggestion of including at least one other pesticide as disclosed by Claim 89 or at least one other fungicide as disclosed by Claim 90. Moreover, the oils utilized in Selga are from the genus *Pinus* (pine), *Leptospermum* (tea tree), and *Eucalyptus* (eucalyptus), not *Labiatae* and *Umbellifera* as required by Claims 89 and 114, nor *Laurus*, as required by Claim 90. Thus, it is respectfully submitted that the herbicide of Selga cannot render obvious applicants' claimed compositions.

In view of the foregoing amendment and remarks, early and favorable reconsideration of this application is respectfully requested.

Respectfully submitted,



Michael R. Brew  
Reg. No.: 43,513  
Attorney for Applicant(s)

***Carter, DeLuca, Farrell & Schmidt, LLP***  
445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526  
JS/MRB/jjp